

STATE OF MICHIGAN
COURT OF APPEALS

In the Matter of ALYSSA MARIE BARNES and
JESSICA L. BARNES, Minors.

DEPARTMENT OF HUMAN SERVICES,

Petitioner-Appellee,

v

SCOTT MICHAEL BARNES,

Respondent-Appellant.

UNPUBLISHED

August 23, 2007

No. 275355

Oakland Circuit Court

Family Division

LC No. 05-702538-NA

Before: Davis, P.J., and Schuette and Borrello, JJ.

MEMORANDUM.

Respondent appeals as of right an order terminating his parental rights to his two minor children pursuant to MCL 712A.19b(3)(c)(i), (g), and (j). We affirm.

In order to terminate parental rights, the trial court must find that at least one of the statutory grounds for termination has been met by clear and convincing evidence. *In re BZ*, 264 Mich App 286, 296; 690 NW2d 505 (2004). Once the lower court determines that a statutory ground for termination has been established, it “shall order termination of parental rights . . . unless the court finds that termination of parental rights to the child is clearly not in the child’s best interests.” MCL 712A.19b(5). See also *In re Trejo*, 462 Mich 341, 352-354; 612 NW2d 407 (2000). We review a decision terminating parental rights for clear error. MCR 3.977(J); *Trejo, supra* at 356. We “review for clear error both the court’s decision that a ground for termination has been proven by clear and convincing evidence and . . . the court’s decision regarding the child’s best interest.” *Trejo, supra* at 356-357.

Respondent argues that the statutory grounds for terminating his parental rights were not established by clear and convincing evidence. The grounds under which the trial court terminated respondent’s parental rights are:

(c) The parent was a respondent in a proceeding brought under this chapter, 182 or more days have elapsed since the issuance of an initial dispositional order, and the court, by clear and convincing evidence, finds either of the following:

(i) The conditions that led to the adjudication continue to exist and there is no reasonable likelihood that the conditions will be rectified within a reasonable time considering the child's age.

* * *

(g) The parent, without regard to intent, fails to provide proper care or custody for the child and there is no reasonable expectation that the parent will be able to provide proper care and custody within a reasonable time considering the child's age.

* * *

(j) There is a reasonable likelihood, based on the conduct or capacity of the child's parent, that the child will be harmed if he or she is returned to the home of the parent. [MCL 712A.19b(3).]

There was clear and convincing evidence that the conditions that led to the adjudication continued to exist. The conditions that led to the removal of the children from respondent's home primarily stemmed from respondent's problems with substance abuse. Respondent testified that his substance abuse problems began when he was about 17 years old. At that time, he began smoking marijuana and using cocaine. At the time the children were removed, respondent was on probation for a domestic violence offense¹ and alcohol and drug use. He was also in a residential substance abuse treatment program, which he had been court ordered to complete. Despite his participation in the residential treatment program and opportunities to receive help for his substance abuse problems, respondent was either unable or unwilling to take the steps necessary to overcome his substance abuse issues. Respondent never submitted verification of his attendance at Alcoholics Anonymous (AA) or Narcotics Anonymous (NA) meetings, as required by the parent agency agreement (PAA). From approximately March 2005 until early December 2005, respondent successfully completed drug screens as required by the PAA. Beginning in December 2005, however, respondent's compliance with drug screens came to a halt. From December 2005 to June 2006, respondent missed 30 drug screens and had one positive drug screen. He also refused to submit to a hair follicle test. At a permanency planning hearing on June 7, 2006, respondent admitted that he had smoked marijuana the previous week. At the best interest hearing on October 26, 2006, he admitted that he had used cocaine in August 2006, but insisted that his drug use never affected his ability to parent his children. While it appeared that at least for a time, respondent was beginning to make progress in overcoming his problems with substance abuse, he was ultimately unable to maintain sobriety and conquer his problems with substance abuse.

Based on respondent's failure to overcome his substance abuse problems, we also conclude that there was clear and convincing evidence that respondent would be unable to

¹ The record reveals that respondent's domestic violence offense was committed against the children's mother, who is now deceased. According to the complaint, she died in September 2004 of a brain aneurysm that may have been related to a cocaine overdose.

provide proper care and custody of his children within a reasonable time considering the ages of the children.² A parent's failure to comply with the PAA is evidence of the parent's failure to provide proper care and custody for the child. *In re JK*, 468 Mich 202, 214; 661 NW2d 216 (2003); *Trejo, supra* at 360-363. Respondent did not comply with the substance abuse requirements of the PAA. Specifically, respondent never provided verification of his attendance of AA or NA meetings. Furthermore, while he complied, for a time, with the requirement that he submit to drug screens, he was unable to maintain compliance with the drug screen requirement of the PAA. Because respondent was unable to overcome his substance abuse problems, he was unable to provide proper care and custody for his children. MCL 712A.19b(3)(g). In addition, given respondent's inability to overcome his substance abuse problem, there was also clear and convincing evidence that there is a reasonable likelihood that the children would be harmed if placed in respondent's care. MCL 712A.19b(3)(j). We completely disagree with respondent's claim that his drug use did not affect his ability to parent his children. It is axiomatic that there is a significant safety issue and likelihood of harm to children who live in a home in which the child's parent is a substance abuser.

Respondent suggests that termination of his parental rights was based on his failure to comply with case plans which petitioner never prepared, as required by statute and the juvenile court rules. We disagree. To the contrary, there was evidence independent of any case plans to support termination of respondent's parental rights based on MCL 712A.19b(3)(c)(i), (g), and (j).

If the lower court finds that a statutory ground for termination has been established, it must terminate parental rights unless termination was clearly not in the children's best interests. MCL 712A.19b(5); *Trejo, supra* at 352-354. "Subsection 19b(5) attempts to strike the difficult balance between the policy favoring the preservation of the family unit and that of protecting a child's right and need for security and permanency." *Trejo, supra* at 354. Although the record reveals that respondent loved and had a bond with his children, he was unable to overcome his substance abuse problems. Termination of respondent's parental rights was therefore in the children's best interests.

Affirmed.

/s/ Alton T. Davis

/s/ Bill Schuette

/s/ Stephen L. Borrello

² We observe that only one subsection of MCL 712A.19b(3) need be satisfied to terminate parental rights. *In re Trejo*, 462 Mich 341, 350, 352; 612 NW2d 407 (2000). Nevertheless, we find that there was clear and convincing evidence to support termination of respondent's parental rights under MCL 712A.19b(3)(c)(i), (g), and (j).